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July 11, 2001

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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JUL 11 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Western Wireless Corporation Petition for Designation
as an Eligible Telecommunications Carrier and for
Related Waivers to Provide Universal service to the
Crow Reservation in Montana, CC Doc. No. 96-45, DA
99-1847

Petition of the State Independent Alliance and the
Independent Telecommunications Group for a
Declaratory Ruling that the Basic Universal Service
Offering Provided by Western Wireless in Kansas is
Subject to Regulation as Local Exchange service, WT
Docket no. 00-239

Ex Parte Submission

Dear Ms. Salas:

On June 10, 2001, Michael Strand and David Cosson, representing Project Telephone Company met with Carol Matthey, Jack Zinman, Katherine Schroder, Anita Cheng and Richard Smith of the Common Carrier Bureau to discuss the above proceedings. The discussion followed generally the attached "Presentation of Project Telephone Company to FCC," copies of which were distributed. Also distributed at the meeting were copies of previous *Ex Parte* filings from June 29 and March 27, 2001, and a copy of the attached Montana Independent Telecommunications Carriers Advanced Services/Facilities Map. The Bureau staff requested certain additional information concerning telephone service on the Crow Reservation which will be provided promptly in a separate filing.

The Project Telephone Company representatives also explained that state authority over the

service for which Western Wireless seeks ETC designation is not restricted by Section 332 of the Act because the service involves a "station" which does not "ordinarily" move as that term is used in Section 3(28) of the Act with the result that the service is not a mobile service. A sample of the Telular Phonecell unit was demonstrated.

If there are any questions in this matter, please contact me. Two copies of this letter are provided for each proceeding referenced.

Sincerely yours

A handwritten signature in black ink, appearing to read "David Cosson", written in a cursive style.

David Cosson

Attachments

cc: Carol Matthey
Jack Zinman
Katherine Schroder
Anita Cheng
Richard D. Smith

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Presentation of Project Telephone Company to FCC

Re: Application of Western Wireless
for ETC Status on the Crow Indian
Reservation

Western Wireless' Application in a Nutshell

- Filed, then withdrew application to Montana PSC for ETC status for all of Montana when ordered by Montana PSC to respond to data requests
- Then applied to FCC for ETC on Crow Reservation

Western Wireless' Application in a Nutshell

- FCC applications asserts:
 - FCC, not MT PSC has jurisdiction because tribal sovereignty preempts state jurisdiction
 - The Crow Reservation is so underserved that WW can significantly improve penetration without harming rural incumbents
- Both arguments are erroneous

Jurisdiction

- Montana Legislature has unambiguously given PSC jurisdiction to determine ETCs under both federal Telecommunications Act and state statute
- Montana PSC states that it would give WW's re-filed application prompt consideration

Jurisdiction

- Legally--no statutory or case law supports WW's assertion that MT PSC jurisdiction is preempted by tribal sovereignty. Tribal jurisdiction under exceptions to *Montana* is not exclusive.
- Practically--ramifications far exceed ETC status, e.g., who then has:
 - Jurisdiction over local service rates & intrastate access rates, and any future state Universal Service Fund?
 - Jurisdiction over quality of service?

Availability of Service

- WW's erroneous claim of 45% penetration on Crow reservation apparently based on 1990 census numbers.
- In 1990, the Crow Reservation was served by U S WEST. In 1994, all but one of their Crow exchanges were sold to one of the most progressive companies in Montana

Availability of Service

- Crow Reservation grew from 6,370 in 1990 to 6,894 in 2000, less than 1% per year
- Exchanges Project bought in 1994 from US WEST had 301 business lines and 883 residential lines
- Project now serves 600 business lines (99% increase) and 1402 residential lines (59% increase) while population grew 8%

Availability of Service

- Local electric cooperative counted 1713 residential electric meters and two homes without electricity
- 1994 Penetration (US West): 883 residential lines divided by 1715 households = 51%
- 2001 Penetration (Project): 1371 lines divided by 1715 = 80%

(1402 lines less 31 multiple listings to the same address = 1371 lines)

Why Has Penetration Improved So Dramatically?

- Significant plant investment (copper, fiber, local Internet access, DSL)
- Enhanced Lifeline and Link Up
- Improved Line Extension Policy
- Service availability is virtually ubiquitous

Why Has Penetration Improved So Dramatically?

- New Deposit and Reconnection Policies
- Project opened local offices and arranged for local payment points
- Local customer service representative available to Reservation subscribers.
- Free seminars on Internet use
- Workforce predominately Crow members, Crow member of Board of Directors

New Enhanced Service Offerings

- Internet access
- SS7 Implementation
- ADSL
- Vision Net—Provides interactive video-conferencing over ATM network for education, telemedicine and commercial uses

Public Interest Factors

- ETC designation of WW will foreclose continuation of Project's high level of service.
 - *Windfall* subsidy to WW will substantially reduce Project's revenues, but not its costs
 - WW estimates rural Montana wireless cost/line at \$92.90/mo, wireline at \$188.84, but asks for USF based on wireline cost
 - There is no established test for the validity of a Sec. 254(e) certification

Public Interest Factors

- WW service is of lower quality and does not promote evolution to advanced services
 - WW network is not designed for traffic volume and holding times of wireline customers
 - WW network provides Internet access at 9.6kbs
 - WW service not usable in health care facilities.
- Project has been seeking authority to offer expanded calling scope since before WW's application and expects to offer it soon.

Partial Study Area Issue

- WW Crow application recognizes obligation to serve entire study area of rural telephone company, unless and until changed
- In *Wyoming* and *Pine Ridge* WW claimed FCC could designate 2d ETC for portion of a study area
- FCC Smith Bagley proceeding recognizes applicability of Section 54.207

Bottom Line

- The FCC does not have jurisdiction to act on WW's ETC application
- If the FCC does preempt the Montana PSC, it should find that it is not in the public interest to designate WW as a second ETC on the Crow Reservation because of a serious risk to the ability of Project to continue provision ubiquitous, state-of-the-art service.